

**REMARKS**

5           Applicants respectfully request further examination and reconsideration in view of the above amendments and arguments set forth fully below. Claims 1, 4 and 6-26 were previously pending in the instant application. Within the previous Office Action, Claims 1, 4 and 6-26 have been rejected. By way of the above amendments, new Claims 27-31 has been added and Claims 1, 4, 6, 17, 25 and 26 have been amended. Accordingly, Claims 1, 4 and 6-31 are now pending in this application.

10           **Rejections Under 35 U.S.C. § 103(a)**

15           Within the previous Office Action, Claims 1, 6, 21, 22, 25 and 26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,249,772 to Walker (hereafter “Walker”) in view of the article “Subsidized TV Sets?” written by Jeffrey Krauss (hereafter “Krauss”). Specifically, the previous Office Action states that Walker suggests that a central controller performs the function of “enabling/transmitting an acceptance” via internet communication and that Walker teaches a controller is a third party. The applicants respectfully disagree with this position.

20           Walker teaches an online coupon/rebate system for controlling the market price of a product or service. Specifically, Walker teaches a system and method wherein a buyer purchases a product at a first price and acquires the product from a merchant who offers the product at a second price. The first price is established between the buyer and the controller; the second price is established between the merchant and the controller. There is a pre-negotiated contract between the controller and the merchant wherein the controller agrees to pay the difference between the first price and the second price. The controller is a manufacturer or any appropriate service provider.

25           However, Walker does not teach a dynamic third party between the buyer and the seller acting as a deal facilitator. The controller 110 taught by Walker is a static manufacturer or appropriate service provider, such as a dry cleaner. Further, Walker does not teach that the controller is capable of transmitting a counteroffer to the buyer where the counteroffer covers at least a portion of the spread between the buyer’s bid price and the seller’s ask price. The first

price is a “private price” established between the buyer and the controller. [Walker, col. 4, lines 36-38] The primary negotiation occurs between the controller and the buyer in which the “private price” is agreed upon. After the “private price” is agreed upon, the retailer is named on a list generated by the controller. The list of retailers is generated from a group of retailers that have contracted with the controller. The retailer’s price is not affected by negotiation with the buyer. [Walker, col. 4, lines 31-34] In fact, the very essence of Walker provides that the retailer is insulated from the buyer and negotiations as the controller arranges nearly all aspects of the exchange. Also, Walker does not teach that the controller is capable of transmitting a counteroffer to the merchant. The profit margin of the retailer is maintained, so no counteroffer is transmitted to the merchant. [Walker, col. 4, lines 37-43] Walker does not teach that the controller is capable of transmitting an acceptance to the merchant. The controller merely establishes a price, which the controller knows the buyer is willing to pay through primary negotiations, and has a pre-negotiated contract with the merchant to cover differences between the buyer’s willingness to pay and the merchant’s retail price. Accordingly, there is no transmitting of an acceptance in Walker beyond the primary negotiations between the buyer and the controller.

The present invention is directed to a computer-implemented method for facilitating transactions in a wide area network. When the buyer’s bid price and the seller’s ask price are equal, the deal is consummated without third party facilitation. When the bid and ask price are separated by a spread, an interested third party is capable of acting as a deal facilitator. The third party facilitates the deal by transmitting an acceptance or a counteroffer to either the buyer or the seller. The interested third party is capable of individualized decisions based on the current market and the individual consumer. The interested third party is dynamic and need not consist of a static entity.

In contrast to the teachings of Walker, the present invention discloses that an interested third party can act as a deal facilitator between a buyer and a seller, whose respective bid and ask prices are separated by a spread. The present invention discloses that the primary negotiating parties are the buyer and the seller. If the buyer’s bid price and the seller’s ask price are equal, the deal is consummated without facilitation by a third party. The method taught by Walker requires three parties in all instances: the manufacturer, the buyer and the retailer. Walker teaches that the primary parties are the manufacturer and the buyer while the retailer/seller is the third party.

In further contrast to the teachings of Walker, the present invention discloses that the interested third party is any interested party—not limited to a static manufacturer or related service provider. For example, many products/services have complementary products/services which are sold by separately owned businesses, such as digital video recorders and digital media. A digital media manufacturer has an interest in a particular standard of digital video recorders selling, the present invention allows the digital media manufacturer to cover a portion of the difference between the ask and bid price. The digital media manufacturer, of course, expects to recoup this cost later with increased sales of digital media. Also, there may be other parties interested in the sale of the digital video recorders, such as a television manufacturer or a cable/satellite television service provider. As discussed above, the controller taught by Walker is a static manufacturer or appropriate service provider while the present invention teaches the third parties, as well as subsequent parties, are dynamic.

Further in contrast to the teachings of Walker, the present invention discloses that the controller is capable of transmitting a counteroffer to the buyer or seller. The present invention also discloses that the controller is capable of transmitting an acceptance to the buyer or seller. As discussed above, Walker teaches that the price between the controller and the retailer is set by a pre-negotiated contract. Necessarily, there is no acceptance of a price transmitted by the controller. Similarly, there is no counteroffer transmitted by the controller. There is negotiation between the buyer and the controller to establish a “private price”; however, this “private price” is not related to an initial negotiation between the buyer and the seller where the buyer and seller are deadlocked at their respective bid and ask prices. The “private price” is arrived at by negotiation solely between the buyer and controller, where the controller considers the prices set in the pre-negotiated contract with the retailer/manufacturer. Once the “private price” is established, the controller finds a list of retailers with a pre-negotiated contract for reimbursement where the buyer can pay for and pick up the product. Accordingly, the teachings of Walker are distinguishable from the present invention.

The previous Office Action states that Krauss teaches the subsidy concept of the present invention. The Applicants respectfully disagree. Krauss teaches the general concept of a subsidy in the context of mobile phones and televisions. The concept being the service provider, such as Sprint or Cingular, has a vested interest in more people utilizing mobile phones. The service

provider can justify the initial cost of the hardware if the customer signs a contract for a year or some amount of service. Therefore, the service provider makes an agreement with a retailer or a manufacturer to reimburse the retailer or manufacturer after the service contract is signed. Of course, if the consumer cancels the service before the contract term has expired, then there is a  
5 hefty fee charged to the consumer to cover the startup costs of the hardware. Effectively, the service provider is subsidizing the market so that the barrier to entry, the cost of the mobile phone, is much lower. The amount reimbursed for each phone is a pre-negotiated amount based on the amount of profit the service provider expects to realize on the aggregate market. That is, without the subsidy  $S$  the service provider expects to make an aggregate profit  $P_0$ , and with the  
10 subsidy  $S$  the service provider expects to make an aggregate profit of  $P_1$  (where  $P_1 > P_0$ ); therefore, the service provider is willing to subsidize up to the difference of  $P_1$  and  $P_0$  (i.e.  $S < P_1 - P_0$ ).

Under the teachings of Krauss, the subsidy  $S$ , constrained by the calculations above, is a set, pre-negotiated amount between the service provider and the retailer/manufacturer based on  
15 the entire market. However, Krauss does not teach a flexible method for price discrimination based on the individual consumer, information associated with that individual consumer and the current state of the market. Further, the teachings of Krauss do not allow the service provider to make an individualized acceptance or counteroffer to consumers deemed "better" consumers by the information provided in accordance with the present invention. The subsidies of Krauss are  
20 set subsidies based on the aggregate market.

In contrast to the teachings of Krauss, the present invention allows individualized decisions by a third party, such as a service provider. Myriad information is available to the third party in accordance with the present invention. Profit  $P_1'$  and profit  $P_0'$  are data points specific to each individual consumer; therefore, subsidy  $S'$  is also specific to each individual consumer.  
25 The third party utilizes this information to flexibly make decisions related to each individual transaction based on the information of the consumer, such as projected use of the mobile phone service, and the current state of the market. A service provider will provide a larger subsidy if the customer is expected to use the service more and hence generate more revenue. As discussed above, Krauss only teaches that a mobile phone service provider makes decisions based on the  
30 aggregate market. In this way, the service provider makes large profits on some consumers and takes large losses on other consumers—hoping to turn a larger net profit on the long-run averages.

Krauss does not allow individualized decisions such as a counteroffer or acceptance tailored to a specific consumer. Accordingly, the teachings of Krauss are distinguishable from the present invention.

As detailed above, neither Walker, Krauss nor their combination teach or suggest the 5 limitations of the present invention. Accordingly, the present invention is allowable over the teachings and suggestions of Walker and Krauss and their combination. Further, there is no hint or suggestion that the teachings of Walker and Krauss should be combined. It is impermissible to use hindsight to combine the references in a piecemeal fashion. The Applicant reaffirms that even if combined, the references do not teach the present invention; however, the applicant 10 maintains that this combination is improper without a hint or suggestion to combine the references. For at least these reasons, the present invention is allowable over the teaching of Walker, Krauss and their piecemeal combination.

The independent Claim 1 is directed to a computer-implemented method for facilitating 15 transactions in a wide area network. The method of Claim 1 comprises providing information relating to a transaction between a first party and a second party to a third party via the wide area network, the information including a first bid price associated with the first party and a first ask price associated with the second party and enabling the third party to facilitate consummation of the transaction between the first and second parties by transmitting a counteroffer or an 20 acceptance from the third party via the wide area network, and enabling the third party to cover at least part of a first difference between the first bid price and the first ask price. As stated above, 25 Walker does not teach that a third party is enabled to facilitate the consummation of the transaction between the first and second parties when the bid and ask prices are separated by a spread. Walker teaches that the transaction is between the buyer and the controller, and the controller simply searches an inventory of retailers with which the controller has a pre-negotiated contract and then reimburses the retailer. Also as discussed above, Walker does not teach 30 transmitting a counteroffer or an acceptance from the third party. Within the teachings of Walker, between the controller and retailer, the price is pre-negotiated and set by a contract. As to the controller and the buyer, Walker teaches that there is a negotiation of the “private price” but that price is not achieved through initial negotiations between the buyer and the seller. Also as stated above, Krauss does not teach an individualized subsidy scheme based on individual customer data. Krauss teaches subsidies based on the aggregate market only. Accordingly, neither Walker, Krauss nor their combination teach enabling the third party to facilitate 35 consummation of the transaction between the first and second parties by transmitting a

counteroffer or an acceptance from the third party. For at least these reasons, the independent Claim 1 is patentable over the teachings of Walker, Krauss and their combination.

Claims 6, 21 and 22 are dependent on the independent Claim 1. As discussed above, the independent Claim 1 is allowable over the teachings of Walker, Krauss and their combination.

5 Accordingly, Claims 6, 21 and 22 are all also allowable as being dependent on an allowable base claim.

The independent Claim 25 is directed to a computer program product for facilitating transactions in a wide area network. The product of Claim 25 comprises at least one computer readable medium and computer program instructions stored in the at least one computer readable 10 medium for causing at least one computer to provide information relating to a transaction between a first party and a second party to a third party via the wide area network, the information including a bid price associated with the first party and an ask price associated with the second party and enable the third party to facilitate consummation of the transaction between the first and second parties by transmitting a counteroffer or an acceptance from the third party 15 via the wide area network, and enabling the third party to cover at least part of a difference between the bid and ask prices. As stated above, Walker does not teach that a third party is enabled to facilitate the consummation of the transaction between the first and second parties when the bid and ask prices are separated by a spread. Walker teaches that the transaction is 20 between the buyer and the controller, and the controller simply searches an inventory of retailers with which the controller has a pre-negotiated contract and then reimburses the retailer. Also as discussed above, Walker does not teach transmitting a counteroffer or an acceptance to either the first party or the second party. Within the teachings of Walker, between the controller and retailer, the price is pre-negotiated and set by a contract. As to the controller and the buyer, 25 Walker teaches that there is a negotiation of the "private price" but that price is not achieved through initial negotiations between the buyer and the seller. Also as stated above, Krauss does not teach an individualized subsidy scheme based on individual customer data. Krauss teaches subsidies based on the aggregate market only. Accordingly, neither Walker, Krauss nor their combination teach enabling the third party to facilitate consummation of the transaction between the first and second parties by transmitting a counteroffer or an acceptance from the third party. 30 For at least these reasons, the independent Claim 25 is patentable over the teachings of Walker, Krauss and their combination.

The independent Claim 26 recites a method for facilitating transactions in a wide area network. The method of Claim 26 comprises selectively providing information relating to a

plurality of bids on a transaction site to a third party via the wide area network, a first one of the bids involving a first party and a second party, the first bid including a bid price associated with the first party and an ask price associated with the second party, transmitting a response from the third party to one of either the first party or the second party via the wide area network, the  
5 response comprising a counteroffer or acceptance covering at least part of a difference between the bid and ask prices and notifying the other of the first party or the second party of the response via the wide area network. As stated above, Walker does not teach that a third party is enabled to facilitate the consummation of the transaction between the first and second parties when the bid and ask prices are separated by a spread. Walker teaches that the transaction is between the  
10 buyer and the controller, and the controller simply searches an inventory of retailers with which the controller has a pre-negotiated contract and then reimburses the retailer. Also as discussed above, Walker does not teach transmitting a counteroffer or an acceptance from the third party to one of either the first party or the second party. Within the teachings of Walker, between the controller and retailer, the price is pre-negotiated and set by a contract. As to the controller and  
15 the buyer, Walker teaches that there is a negotiation of the “private price” but that price is not achieved through initial negotiations between the buyer and the seller. Also as stated above, Krauss does not teach an individualized subsidy scheme based on individual customer data. Krauss teaches subsidies based on the aggregate market only. Accordingly, neither Walker,  
20 Krauss nor their combination teach transmitting a response from the third party to one or either the first party or the second party, the response comprising a counter offer or an acceptance covering at least part of a difference between the bid and ask prices. For at least these reasons, the independent Claim 26 is patentable over the teachings of Walker, Krauss and their combination.

Within the previous Office Action, Claim 23 has been rejected under 35 U.S.C. § 103(a)  
25 as being unpatentable over Walker in view of Krauss and further in view of U.S. Patent No. 5,946,667 to Tull (hereinafter “Tull”). Claim 23 is dependent on the independent Claim 1. As discussed above, the independent Claim 1 is allowable over the teachings of Walker, Krauss and their combination. Accordingly, Claim 23 is also allowable as being dependent on an allowable base claim.

30 Within the previous Office Action, Claim 24 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,946,667 to Walker, Jr. in view of Krauss, Tull and further in view of U.S. Patent No. 6,519,574 to Wilton (hereinafter “Wilton”). Claim 24 is dependent on the independent Claim 1. As discussed above, the independent Claim 1 is

allowable over the teachings of Walker, Krauss and their combination. Accordingly, Claim 24 is also allowable as being dependent on an allowable base claim.

Within the previous Office Action, Claims 13-15 and 18-20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Walker in view of Krauss and further in view of the 5 Official Notice. Claims 13-15 and 18-20 are dependent on the independent Claim 1. As discussed above, the independent Claim 1 is allowable over the teachings of Walker, Krauss and their combination. Accordingly, Claims 13-15 and 18-20 are all also allowable as being dependent on an allowable base claim.

Within the previous Office Action, Claims 16 and 17 have been rejected under 35 U.S.C. 10 10 § 103(a) as being unpatentable over Walker in view of Krauss, further in view of U.S. Patent No. 5,797,127 to Walker and further in view of the Official Notice. Claims 16 and 17 are dependent on the independent Claim 1. As discussed above, the independent Claim 1 is allowable over the teachings of Walker, Krauss and their combination. Accordingly, Claims 16 and 17 are both also allowable as being dependent on an allowable base claim.

15 Within the previous Office Action, Claims 7-10 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Walker in view of Krauss and further in view of U.S. Patent No. 5,797,127 to Walker. Claims 7-10 are dependent on the independent Claim 1. As discussed above, the independent Claim 1 is allowable over the teachings of Walker, Krauss and their combination. Accordingly, Claims 7-10 are all also allowable as being dependent on an 20 allowable base claim.

Within the previous Office Action, Claim 4 has been rejected under 35 U.S.C. § 103(a) as 25 being unpatentable over Walker in view of Krauss and further in view of U.S. Patent No. 6,338,050 to Conklin. Claim 4 is dependent on the independent Claim 1. As discussed above, the independent Claim 1 is allowable over the teachings of Walker, Krauss and their combination. Accordingly, Claim 4 is also allowable as being dependent on an allowable base claim.

Within the previous Office Action, Claims 11 and 12 have been rejected under 35 U.S.C. 30 § 103(a) as being unpatentable over Walker in view of Krauss and further in view Wilton. Claims 11 and 12 are dependent on the independent Claim 1. As discussed above, the independent Claim 1 is allowable over the teachings of Walker, Krauss and their combination. Accordingly, Claims 11 and 12 are both also allowable as being dependent on an allowable base claim.

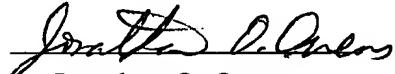
**PATENT**  
Attorney Docket No.: NEXTA-00308

For the reasons given above, the Applicant respectfully submits that Claims 1, 4 and 6-31 are all in condition for allowance, and allowance at an early date would be appreciated. Should the Examiner have any questions or comments, he is encouraged to call the undersigned at (408) 530-9700 to discuss them so that any outstanding issues can be expeditiously resolved.

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Respectfully submitted,  
HAVERSTOCK & OWENS LLP

10 Dated: August 15, 2005

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CERTIFICATE OF MAILING (37 CFR§ 1.8(a))

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the: Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450

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